

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL  
DISTRICT.

OAH CASE NO. 2013020854

ORDER DENYING MOTION FOR  
STAY PUT

On February 25, 2013, Parents on behalf of Student (Student) filed a request for due process and mediation (Complaint) with the Office of Administrative Hearings (OAH), against the San Mateo-Foster City School District (District). On February 26, 2013, Student filed a motion for stay put (motion). The District has not filed a response to Student's motion.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)<sup>1</sup>; Ed. Code, § 56505, subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

However, if a student's placement in a program was intended only to be a temporary placement, such placement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm.* (1st Cir. 1999) 207 F.3d 1, 7-8; *Leonard v. McKenzie* (D.C. Cir. 1989) 869 F.2d 1558, 1563-64.)

DISCUSSION

Student complains that he is entitled to District reimbursement for speech and occupational therapy (OT) services as part of his stay put placement. Student contends that pursuant to a February 7, 2009 settlement agreement (Agreement), the District agreed to reimburse Parent for private speech and OT services. Pursuant to a March 13, 2012 IEP, the District stated it would no longer be paying for the private speech and OT service. Student

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<sup>1</sup> All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

asserts that Parent did not agree to this change to Student's educational program, and therefore the District is required to continue reimbursing Student for the private speech and OT services during the pendency of the present due process hearing. Student has provided a copy of the Agreement.

However, the Agreement does not provide that the reimbursement for speech and OT services is part of Student's educational program, other than for a temporary and prescribed time frame. The Agreement provides the following:

The District shall reimburse Parent in an amount not to exceed seven hundred dollars (\$700.00) per week for educational services provided to Student for four (4) weeks during the 2008 ESY [extended school year], and for each week school is in session according to the District regular school calendar, from August 27, 2009 through February 28, 2009. Educational services may include speech therapy or occupational therapy, and social groups.

It is clear from the Agreement that reimbursement for educational services, including speech and OT, was intended only to be temporary; from the 2008 extended school year through February 28, 2009. Consequently, such reimbursement does not provide the basis for a student's "stay put" placement. (*Verhoeven v. Brunswick Sch. Comm., supra*, 207 F.3d at p. 10.) It does not matter that the Agreement excludes reimbursement for speech and OT services from a stay put waiver, as Student is not entitled to such reimbursement as part of stay put under these facts.<sup>2</sup>

Student may renew his motion for stay put if he can establish that reimbursement for the speech and OT services was agreed upon in a manner and instrument that was not intended to be temporary.

#### ORDER

Student's motion for stay put is denied without prejudice.

Dated: March 06, 2013

/s/

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PAUL H. KAMOROFF  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> The Agreement provides the following "stay put waiver": Parent agrees to waive stay put for any and all services privately provided, with the exception of one session of occupational therapy per week, and two speech and language therapy sessions per week.